



POLICE DEPARTMENT

December 14 2010

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Marlene Quinones
Tax Registry No. 927381
34 Precinct
Disciplinary Case No. 85445/09

The above-named member of the Department appeared before the Court on August 30, 2010, charged with the following:

1. Said Sergeant Marlene Quinones, assigned to the 46th Precinct, on or about October 2, 2008, while on sick report, was wrongfully and without just cause absent from her residence without the permission or authority of said officer's District Surgeon and/or Medical Division Sick Desk Supervisor for approximately 1 hour and 47 minutes.

P.G. 205-01 Page 2, Paragraph 4 REPORTING SICK/PERSONNEL MATTERS

The Department was represented by Daniel Maurer, Esq., Department Advocate's Office, and the Respondent was represented by Craig Hayes, Esq.

The Respondent, through her counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Guilty.

COURTESY • PROFESSIONALISM • RESPECT

SUMMARY OF EVIDENCE PRESENTEDThe Department's Case

The Department called Sergeant Frank Baer as a witness.

Sergeant Frank Baer

Baer was assigned to the Medical Division's Absence Control and Investigations Unit. On October 2, 2008, he went to the Respondent's house to notify her to report to the Medical Division the next day. The Respondent had a pass to be out of residence between 2:00 p.m. and 6:00 p.m.

When Baer arrived at the Respondent's house at 6:45 p.m., he rang several bells and knocked on the front door. An upstairs neighbor answered and told Baer that she would get the Respondent for him. At approximately 6:49 p.m., the Respondent's daughter, Jessica Perez, came to the door and told Baer that the Respondent was in the shower and would be out in about an hour. Baer informed Perez that this was unacceptable and that he needed to see the Respondent immediately. Perez asked Baer to wait ten minutes.

When Baer knocked on the door again ten minutes later, Perez told him that the Respondent was still in the shower. Perez looked nervous, and Baer asked her if the Respondent was really at home. Perez stated that she would look for the Respondent again. Perez quickly returned to the door and told Baer that it was actually her grandmother who was in the shower. Perez now did not know where the Respondent was. Perez told Baer that the Respondent was carrying Perez's cell phone. Baer called that number and left a voice mail.

At 7:47 p.m., the Respondent returned Baer's call and told him that she was at home, claiming that she had been reading in her backyard the entire time. At 7:52 p.m., Baer met with the Respondent in the house and had her sign paperwork.

Baer testified that in a subsequent official Department interview, the Respondent stated that she might have gone to a store at some point after 6:00 p.m., but she did not recall which store.

On cross-examination, Baer testified that the Respondent lived in the basement apartment of a two-story house. The houses in the area were in close proximity to each other (see Respondent's Exhibit [RX] A, photograph of the Respondent's house).

Baer stated that he did not leave the area between 6:45 p.m. and 7:52 p.m. All he did was walk between the house and his car parked down the block. He explained that had nobody answered the door, he might have walked around the house to check the backyard. Because Perez spent approximately 20 minutes looking for the Respondent and then told him that the Respondent was not there, Baer did not think it was necessary to search the yard. At one point, Perez told Baer that the Respondent was having problems with her asthma and might have gone to the hospital.

On re-direct examination, Baer testified that there was no indication in the out-of-residence log that the Respondent went to the hospital for a medical condition or asked to go to a drugstore.

Upon questioning by the Court, Baer stated that Perez was approximately 16 years old. Baer admitted that he did not try calling the Respondent on her home landline telephone.

The Respondent's Case

The Respondent testified on her own behalf.

The Respondent

The Respondent, a ten-year member of the Department, was promoted to Sergeant in May 2008 but demoted to Police Officer in September 2009 as a result of the October 2, 2008, incident. On that day, she was out sick due to three herniated discs in her back. She sustained this injury on an amusement park ride and had been out sick since the previous August. She lived in a basement apartment with her daughter, son, and grandson. Her daughter, Perez, was 18 years old at the time.

During her pass hours, the Respondent testified, she left her house to pick up her mother. After returning home, she went outside to her backyard. This was at 4:00 or 5:00 p.m. She stated that she often spent time in the backyard as a respite from her basement apartment. The door to the yard was from the kitchen. To get from the front door of the apartment to the yard door, one needed to walk "straight through the apartment, past the one bedroom, past the next one, past the living room, and there's a door. You open that door and then you go to another door and that's the backyard." According to the Respondent, she did not hear anybody ring the doorbell while she was reading in the backyard between 6:45 p.m. and 7:52 p.m., and she did not have a cell phone with her. She did not know that anybody was looking for her until she entered the house and spoke with Perez. At that point, she called Baer.

Quinones testified that her delegate from the Sergeants Benevolent Association (SBA) was present at the official Department interview. Based on a discussion with the delegate prior to the interview, the Respondent believed that the Department would offer her a penalty of one

vacation day if she admitted to being out of residence. She was never told that she would face charges and specifications or be demoted. She did not consult an attorney before the interview. When she was asked during the interview if she might have left her residence, she looked at her delegate. The delegate proceeded to ask her if she went to the convenience store or to the gas station. The Respondent replied that she might have gone to the store. She claimed at trial that she meant she might have left the house during her pass hours, which would have been before she went out to the yard.

On cross-examination, the Respondent testified that her apartment did not have windows into the backyard. The apartment was approximately 60 feet long.

The Respondent stated that during her pass hours, she picked up her son at school and went to a store located on the street behind her house. While she was in the yard, her mother, daughter, son, and grandson were all inside the house. She did not tell any of them that she was going to be in the yard.

Upon questioning by the Court, the Respondent testified that she walked past her mother in the living room as she was going out to the yard. While in the yard, she would not have been able to hear people talking inside the house.

FINDINGS AND ANALYSIS

The Respondent is charged with being absent from her residence while on sick leave. She was out sick for a period of time due to non-line-of duty orthopedic back injuries she sustained while on amusement park rides. The Department's witness, Sergeant Frank Baer of Absence Control, came to her residence on October 2, 2008, to deliver a notification for the Respondent to appear at the Medical Division at Lefrak City. The Respondent had a pass for that

day from 2:00 p.m. to 6:00 p.m. Baer arrived at approximately 6:45 p.m. The Respondent's teenage daughter, Jessica Perez, answered the door. She said that her mother, the Respondent, was in the shower and that Baer should return in about an hour. Baer, not surprisingly, found this suspicious and told Perez that he needed to see the Respondent right away. Perez returned, but said that her mother was still in the shower and that she didn't want to disturb her. Baer, incredulous, asked Perez if the Respondent was really at home.

Perez returned and said that it was actually her grandmother in the shower and that she did not know where her mother was. Perez provided a cell phone number for Baer to contact the Respondent, and Baer left a message on that phone. A little less than an hour after Baer first spoke to Perez, the Respondent called back and said that she was in the backyard the entire time.

Baer also testified that during her official Department interview, the Respondent admitted being out of residence by stating she might have gone to the store, but did not remember which one.

The Respondent testified that she went into her backyard after 6:00 p.m. to relax. Her residence was the basement apartment in a multiple-dwelling unattached house. The homes on the block were located close together, as seen in RX A, a Google photograph of the Respondent's home and adjacent buildings. She also stated that before her official interview, she was advised by her representative, an SBA delegate, that the Department was offering "one day" as a penalty. She claimed that during the interview, Baer asked her if she had been out of residence. The delegate prodded her, querying if perhaps she went to a store. The Respondent answered that she might have gone to a store. At trial, she claimed that that when she answered that question, she meant that she left the residence during her pass hours.

The Court does not credit the Respondent's account. Perez's first statement to Baer – that the Respondent was taking a shower and needed an hour to finish – was laughable on its face. Perez would not have made such a ridiculous statement unless she knew it to be false. Its utterance demonstrates that the Respondent was not there. Perez's disassembling only became more incredible, and she eventually admitted that she did not know where the Respondent was. The Respondent testified that neither she nor her mother was taking a shower at the time.

The Respondent's testimony as to her whereabouts was not believable. The Respondent described the length of her home as fitting within the length of the Trial Room. Yet, she asserted that she was unable to hear people talking inside the house. The Respondent testified that she frequently went into her backyard to relax, but did not explain why, if she was truly there, no adult member of her household went outside to look for her.

The Respondent's account of her official Department interview was also suspect. The only reason she was being interviewed was because she was the subject of an investigation. Her "belief" that Baer was actually asking whether she had left her house during her pass hours makes no sense because that would not have been a violation of Department rules. Nor would it have been necessary for her delegate to prod her into answering. The Court notes that the Respondent was a sergeant at the time and should have been aware of why an Absence Control investigator would be asking such a question. The Court also notes her trial testimony that she went to a nearby store during her pass hours, so it makes little sense that when she admitted in her interview that she *might have* gone to the store, she meant it was during pass hours.

Accordingly, the Department finds the Respondent Guilty as charged.

PENALTY


In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222, 240 (1974). The Respondent was appointed to the Department on September 29, 2000. Information from her personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

The Respondent has been found Guilty of being absent from her residence while sick, outside of her pass hours. There is no indication that she was not legitimately sick, and it appears that she went to a store. Her pass would have permitted this, but she was out after her pass expired.

The Court notes that the Respondent, a probationary Sergeant at the time of the incident, has already been punished to the extent that she was demoted to the rank of Police Officer. Her testimony at trial, however, strained credulity, to say the least. Accordingly, the Court recommends that the Respondent forfeit 15 vacation days as a penalty. See Case No. 81652/06, signed Dec. 12, 2006 (six-year member with no prior disciplinary record forfeited 15 vacation days for being out of residence without permission while on sick report, after she drove her son to her mother's house).

APPROVED
APR 05 2011
RAYMOND W. KELLY
POLICE COMMISSIONER

Respectfully submitted,


David S. Weisel
Assistant Deputy Commissioner – Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER MARLENE QUINONES
TAX REGISTRY NO. 927381
DISCIPLINARY CASE NO. 85445/09

In 2007 and 2009, the Respondent received an overall rating of 4.5 “Extremely Competent/Highly Competent” on her annual performance evaluation. She was rated 3.0 “Competent” in 2006. [REDACTED]

[REDACTED]. She has no prior formal disciplinary record.

For your consideration.



David S. Weisel
Assistant Deputy Commissioner Trials